

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 72****Construction and Arrangement***CFR Correction*

In Title 46 of the Code of Federal Regulations, parts 70 to 89, revised as of October 1, 1997, page 52, § 72.25–15 is corrected in Table 72.25–15(A) under “Washbasins” by correcting the entry “61” to read “1”.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 0**

[GC Docket No. 96–55; FCC 98–184]

Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to set out more clearly what should be contained in a request that information not be routinely available for public disclosure, provide that audit information and programming contracts will be presumed to be exempt from routine public disclosure, codify its practice of sometimes deferring action on a request for confidentiality until a request for inspection is made, and otherwise clarify its rules, delete obsolete references, and renumber the rules. The Commission also adopts a Model Protective Order (MPO) for general use.

DATES: These rules are effective November 20, 1998. Public comments on the information collection requirements are due on or before October 20, 1998.

ADDRESSES: Send comments on information collections contained herein to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418–1720. For additional information concerning information collections contained herein, contact Judy Boley at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

1. The handling of confidential information requires the Commission to

balance the concerns of the parties submitting information and the interest of the public in accessing that information. The manner in which the Commission performs this task affects both the competitive nature of the telecommunications industry and the performance of the Commission's public responsibilities. As the telecommunications industry becomes increasingly competitive, participants increasingly assert that the information they provide to the Commission is competitively sensitive. Likewise, there are an increasing number of disputes among competitors concerning requests for confidential treatment.

A. Substantiating Confidentiality Claims

2. When a person submitting information to the Commission requests that it not be made available routinely to the public, 47 CFR 0.459(b) requires that each such request contain a statement of the reasons for withholding the materials from inspection and the factual basis for the request. We believe that specifically identifying types of information we need to evaluate requests for confidentiality will reduce the number of unsubstantiated requests that we receive and conserve the resources of the submitters by providing them with guidance as to what kind of information we require to decide a confidentiality request.

3. Accordingly, we will amend 47 CFR 0.459(b) to list the types of information that should be included in a request. Where relevant, the following should be submitted:

- (i) identification of the specific information for which confidential treatment is sought;
- (ii) identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;
- (iii) explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;
- (iv) explanation of the degree to which the information concerns a service that is subject to competition;
- (v) explanation of how disclosure of the information could result in substantial competitive harm;
- (vi) identification of any measures taken by the submitting party to prevent unauthorized disclosure;
- (vii) identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;
- (viii) justification of the period during which the submitting party asserts that

material should not be available for public disclosure; and

(ix) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

4. We do not agree that substantiation of a confidentiality request at the time the request is made is arbitrary and unduly burdensome. To the extent there are changes in, for example, the measures taken by the submitter to prevent disclosure, the extent to which the information has already been disclosed, and the degree of competition facing the service in question, between the time the request for confidential treatment is made and the time a request for disclosure is received, we note that submitters are permitted to update their confidentiality request before any records are released.

B. “Persuasive Showing” That Confidential Materials Should Be Released

5. To obtain access to records listed in 47 CFR 0.457(d) or records withheld from inspection under 47 CFR 0.459(a), our current rules provide that the requesting party must make “[a] persuasive showing as to the reasons for inspection” in a filing which must “contain a statement of the reasons for inspection and the facts in support thereof.” We believe that the determinations of whether the showing standard has been met should continue to be made on a case-by-case basis. A case-by-case determination is appropriate because it requires a balancing of, *inter alia*, the type of proceeding, the relevance of the information, and the nature of the information. The Commission's current rules contemplate that the Commission will engage in a balancing of the public and private interests when determining whether the “persuasive showing” standard has been met. That balancing may well take into account the type of proceeding involved, whether the requestor is a party to the proceeding, and may also be affected by other factors, such as whether it is feasible to use a protective order. Because we believe that a case-by-case determination is most appropriate, we decline to adopt a blanket rule requiring the requester to demonstrate that access is “vital” to the conduct of a proceeding, necessary to the “fundamental integrity” of the Commission process at issue, or that the